

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO. 8:19-cr-113-T-24AAS

MANUEL PAUL CONFORME LOPEZ,
JORGE TULIO MONTENEGRO CORTES and
RONY EFREN QUINONES MONTANO,

Defendants.

ORDER

THIS CAUSE comes before the Court on Defendant Manuel Paul Conforme Lopez's Motion to Suppress Statement and for an Evidentiary Hearing. (Doc. 30). The Government has filed a Response in Opposition. (Doc. 46). Defendant filed a Reply. (Doc. 51).

I. Introduction

Defendant seeks to suppress his post-arrest, post-*Miranda* statements, claiming that his statements were not voluntary because law enforcement unreasonably delayed his initial appearance before a magistrate judge in Tampa, Florida in violation of Rule 5(a), Federal Rules of Criminal Procedure and because his statements were obtained more than six hours after his arrest contrary to 18 U.S.C. § 3501(c). Defendant also seeks to suppress his statements because of the circumstances surrounding his interrogation, arguing that he did not have the required understanding of his right against self incrimination and did not knowingly and voluntarily waive his rights. Defendant's Motion is due to be denied as it pertains to the delay between Defendant's arrest and his initial appearance, and the delay in obtaining his confession. The

claim that neither Defendant's statements nor his waiver of Miranda rights were knowing, voluntary and intelligent cannot be decided by the Court without conducting a hearing.

II. Discussion

An otherwise voluntary and knowing confession may be suppressed if the confession was not given within six hours following arrest and law enforcement unreasonably delayed in bringing the defendant before a magistrate judge. The purpose of 18 U.S.C. § 3501(c) is to prevent unreasonable delays in presenting a defendant to a magistrate judge. As the United States Supreme Court has noted, presentment is the point at which the judge takes steps to foreclose Government overreaching by "informing the defendant of the charges against him, the right to remain silent, his right to counsel, the availability of bail, and any right to a preliminary hearing." *Corley v. United States*, 556 U.S. 303, 320 (2009).

Here, Defendant was detained on the Coast Guard Cutter ("CGC") Bear on March 11, 2019, after being apprehended in the Pacific ocean, approximately 90 miles southwest of Malpelo Island, and approximately 300 miles west of the west coast of Colombia. (Doc. 46, ¶ 14). Defendant was transferred to the CGC Tampa on March 13, 2019. On March 19, 2019, Defendant was indicted in the Middle District of Florida, Tampa Division. On March 20, 2019, Defendant disembarked from the CGC Tampa and was paroled into the United States in Port Everglades, Florida.. Defendant, along with eight other detainees, charged in Tampa, Florida were driven to Homestead Air force Base, and flown to Tampa. From March 11, 2019 until 4:10 P.M. on March 20, 2019, Defendant had not been interrogated. (*Id.*). Defendant was interrogated at 4:10 P.M. on March 20, 2019. The interrogation lasted approximately 30 minutes. (*Id.*). Defendant then made his initial appearance before the duty magistrate judge in

Tampa on March 21, 2019 at 3:20 P.M.. (*Id.*). Four other detainees from the CGC TAMPA were taken to the Federal Detention Center in Miami and made their initial appearance in Miami on March 21, 2019. (*Id.*)

Under 18 U.S.C. § 3501(c), a district court with a suppression claim must first find “whether the defendant confessed within six hours of arrest (unless a longer delay was ‘reasonable considering the means of transportation and the distance to be traveled to the nearest available magistrate judge’). If the confession came within that period, it is admissible, subject to the other Rules of Evidence, so long as it was ‘made voluntarily and . . . the weight to be given [it] is left to the jury’. If the confession occurred before presentment and beyond six hours, however, the court must decide whether delaying that long was unreasonable or unnecessary under the *McNabb-Mallory* cases, and if it was, the confession is to be suppressed.” *Corley* 556 U.S. at 322. Here, the confession occurred before presentment and beyond six hours; however the delay was not unreasonable or unnecessary. As with most maritime drug interdiction cases, the primary reason for the delay in presentment in accordance with Fed. R. Crim. P. 5(a) was the location of the interdiction and arrest, in the Pacific Ocean, approximately 300 miles off the west coast of Colombia, and the time it took to transport the defendant to the United States.

The issues raised in the instant motion were recently raised in a Title 46 prosecution in the Middle District Court, Tampa Division, *United States v. Urebe, et. al.*, Case No. 8:18-cr-248-T-23SPF. In *Urebe*, the magistrate judge issued a report and recommendation that included a recommendation on the issue of unreasonable delay pursuant to 18 U.S.C. § 3501(c) and Rule 5(a). *Id.*, Doc. 142. The defendants, in *Urebe*, were detained for 16 days, 13 of which were at-sea. *Id.* Upon their arrival in San Diego on Saturday of Memorial Day weekend, May 26, 2018,

Urebe and his co-defendants were flown across the country to Tampa, Florida, where they made their initial appearances before the Tampa Division duty magistrate judge on Tuesday, May 29, 2018. *Id.* The federal courts were closed on Monday, May 28, 2018 in observance of Memorial Day. *Id.*, Doc.142-13. The magistrate judge found that the delay was not unreasonable and recommended the defendants' motion to suppress the statements be denied. *Id.*

The magistrate judge found that the defendants made incriminating statements before presentment and more than six hours after being detained. Defendants had been detained for 16 days, of which 13 days were at sea, before they were finally brought before a United States magistrate judge for an initial appearance. *Id.* However, the magistrate judge reasoned that while the length of the delay was alarming, it was not unreasonable *per se*, citing the supporting cases, *United States v. Castillo*, No. 17-10830, 2018 WL 3853444, at *7 (11th Cir. Aug. 14, 2018) (Martin, J., concurring) (finding that a 19-day delay was reasonable where a defendant was taken into custody approximately 1,000 miles from the port of Miami); *United States v. Portocarrero-Angulo*, No. 3:16-CR-02555-BEN-01, 2017 WL 3283856, at *8 (S.D. Cal. Aug. 1, 2017) (noting that courts have found delays up to 21 days not unreasonable); *United States v. Aragon*, No. 15 CR. 292 (PGG), 2017 WL 2889499, at *14 (S.D.N.Y. July 5, 2017) (finding a sixteen-day delay in presentment was not unreasonable under the circumstances where the defendants were apprehended in the Pacific Ocean, hundreds of miles from the mainland). *Id.* at 10. The district judge adopted the Report and Recommendation and denied the Motion to Suppress. *Id.*, Doc. 145.

Here, the ten day delay was not unreasonable considering where Defendant was arrested and the time it took to transport Defendant to the United States. In addition, the transportation of

Defendant to Tampa, rather than to Miami, for an initial appearance did not further delay his presentment, as Defendant appeared before a magistrate judge in Tampa the same day the four other detainees from the CGC Tampa made their initial appearance in Miami. Further, Defendant was not interrogated during this ten day delay as he was not questioned by law enforcement until 4:10 pm on March 20, 2019.

ACCORDINGLY, it is **ORDERED AND ADJUDGED**:

Defendant Manuel Paul Conforme Lopez's Motion to Suppress Statement and for an Evidentiary Hearing (Doc. 30) is **DENIED** to the extent that it is based on unreasonable delay. The Motion, as it pertains to whether Defendant's confession is otherwise admissible in that Defendant did not voluntarily, knowingly, and intelligently waive his *Miranda* rights, will be set for a hearing by separate notice.

DONE AND ORDERED at Tampa, Florida, this ____ day of August, 2019.


SUSAN C. BUCKLEW
United States District Judge

Copies provided to:
Counsel of Record